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IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY N. DAVIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-0608-CR-633
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Robert L. Barnet, Judge
Cause No. 18C03-0603-FC-12; 18C03-0603-FD-59

February 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Timothy N. Davis appeals the eighteen-month sentence that the trial court imposed after he pleaded guilty to two counts of Theft,[1] a class D felony. Specifically, Davis argues that the sentence was inappropriate in light of the nature of the offenses and his character. Finding that Davis's sentence is not inappropriate, we affirm the judgment of the trial court.

FACTS

On January 31, 2006, Davis entered a Wal-Mart in Delaware County and stole a Leapster Game System from the store. On February 3, 2006, the State charged Davis with class D felony theft and class A misdemeanor battery[2] under cause number 18C03-0603-FD-59 (FD-59).

On February 8, 2006, Davis and his girlfriend Doris Shelton entered the home of Shelton's mother and took boxes containing assorted items from the residence without the mother's permission and with the intent to deprive her of the use and value of the property. On March 1, 2006, the State charged David with class C felony burglary under cause number 18C03-0603-FC-12 (FC-12). On April 13, 2006, the State also charged Davis with class D felony theft under FC-12.

On April 13, 2006, Davis pleaded guilty to class D felony theft in FD-59 and class D felony theft in FC-12, and the State dismissed the remaining charges. According to the

[1] Ind. Code § 35-43-4-2.

[2] The charging information states "on or about January 31, 2006 in Delaware County, State of Indiana, [Davis] did knowingly touch Donald Hatfield in a rude, insolent, or angry manner, to wit: violent shoving and striking resulting in bodily injury, to wit: a bruised an bloody left cheek and a scraped and bloody right pinky . . . ." Appellant's App. p. 114. It is unclear if Hatfield was employed by Wal-Mart and if the alleged battery occurred in or around the store.

plea agreement, the sentences for the two convictions would run consecutively, but the trial court could not impose a sentence greater than eighteen months on each conviction.

The trial court held a sentencing hearing on June 1, 2006, and found three mitigating factors: Davis had no prior felony convictions, he pleaded guilty, and he was employed. The trial court found that Davis's prior class B misdemeanor cruelty to animal conviction was an aggravating factor and that the fact that Davis was out on bond for the FD-59 offense when he committed the FC-12 offense was a significant aggravating factor. Upon balancing the factors, the trial court determined that the mitigating factors outweighed the aggravating factors and sentenced Davis to one year for the FC-12 conviction and six months for the FD-59 conviction. Pursuant to the plea agreement, the trial court ordered that the sentences run consecutively for an aggregate term of eighteen months imprisonment. Davis now appeals.

DISCUSSION AND DECISION

Davis argues that the eighteen-month sentence is inappropriate in light of the nature of the offenses and his character. Specifically, Davis maintains that his sentence is inappropriate because of the nonviolent nature of his offenses and the fact that "it is arguable that Davis was not the principal perpetrator in the taking of the boxes from [Shelton's mother's home]." Appellant's Br. p. 8.

We initially note that our court has the constitutional authority to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). However, sentence review under Appellate Rule 7(B) is very

deferential to the trial court's decision, Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003), and we refrain from merely substituting our judgment for that of the trial court, Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

While Davis argues that he did not use threats or violence to commit the two theft offenses, we are not sure that that is entirely true. With respect to the FD-59 offense, Davis was also charged with class A misdemeanor battery, a charge that the State later dismissed pursuant to the plea agreement. Appellant's App. p. 22-23, 114. Notwithstanding this inconsistency, Davis stole items from his girlfriend's mother's residence in the FC-12 offense, an act that shows both his disrespect for the law and his disrespect for people with whom he has a relationship. Even if it is true that Davis was not the principal perpetrator in the FC-12 offense, we do not find the nature of the offenses to aid Davis's inappropriateness argument.

Turning to Davis's character, we note that Davis was out on bond for the FD-59 offense when he committed the FC-12 offense. Davis's impertinence shows his true character and his failure to learn from previous mistakes and encounters with the legal system. Instead of becoming a law-abiding citizen after his arrest, Davis stole items from his girlfriend's mother's residence approximately one week after being released on bond. Tr. p. 25. Therefore, Davis's character does not convince us that his sentence is inappropriate.

Under the terms of the plea agreement, the trial court had the discretion to sentence Davis to a maximum of thirty-six months imprisonment. Appellant's App. p. 23-24. Based on the nature of the offenses and Davis's character, we cannot say that the eighteen-month sentence he received is inappropriate.

We affirm the judgment of the trial court.

DARDEN, J., and ROBB, J., concur.